

- SUBJECT:** Authorizing the formation of public benefit corporations in Texas
- COMMITTEE:** Economic and Small Business Development — committee substitute recommended
- VOTE:** 7 ayes — Button, Vo, Bailes, Hinojosa, Leach, Metcalf, Ortega
- 0 nays
- 2 absent — Deshotel, Villalba
- WITNESSES:** For — Brian Mikulencak, Blue Dot Advocates, Inc.; Ariane Chan;
(*Registered, but did not testify:* Chris Masey, Coalition of Texans with Disabilities; Cathy DeWitt, Texas Association of Business; Drew Scherberle, The Greater Austin Chamber of Commerce; George Peek)
- Against — None
- On — Mike Powell, Texas Secretary of State; Mira Ganor
- BACKGROUND:** In order to operate as a public benefit corporation (PBC) in Texas, companies must be incorporated in another state. Observers note that the inability to incorporate in-state as a PBC puts Texas companies at a competitive disadvantage due to uncertainty, nonconformity in state laws governing corporations, and the added cost of duplicate filing and documentation across multiple states.
- DIGEST:** CSHB 3488 would allow a for-profit company to elect to be a public benefit corporation (PBC) either by writing or amending its certificate of formation to state that the company was electing to be a PBC. A company electing to be a PBC would have to specify one or more specific public benefits that the corporation would promote in its certificate of formation.
- The bill would require a public benefit corporation's board of directors to manage the business in a manner that balanced the pecuniary interests of shareholders, the benefit or benefits specified in the company's certificate

of formation, and the interests of those materially affected by the corporation's conduct.

The bill would require a public benefit corporation to provide notice of its status as a PBC to most shareholders, unless its name contained the words "public benefit corporation" or an abbreviation.

The bill also would require stock certificates, notices for uncertificated ownership interests, and notices of shareholder meetings issued by a public benefit corporation to clearly disclose the corporation's status as a PBC.

The bill would require a PBC to provide shareholders at least biennially with a report on objectives established to promote public benefits, standards used to measure progress, and assessment of the PBC's success in accomplishing its public benefit objectives.

PBCs would need two-thirds shareholder approval to cancel their election to be a PBC or merge with another entity in a manner that would result in conversion of shares to equity in a non-PBC. For-profit corporations and other domestic entities would need two-thirds shareholder approval to convert into a PBC or merge with another entity in a way that would result in conversion of shares to equity in a PBC. Nonprofits could not merge with or convert into a PBC.

Certain shareholders would be entitled to dissent from a company's amendment concerning its election to be a public benefit corporation.

Directors of public benefit corporations would not owe any duty to a person based solely on their interest in the PBC's specified public benefit or in the material effects of the PBC's conduct.

The bill would take effect September 1, 2017.